

## **REMARKS**

Claims 1 - 11 and 14 – 22 are pending in the application. Claims 1 - 11 and 14 – 22 have been rejected.

Claims 1 - 11, 14 - 16, 21 and 22 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. More specifically, the Examiner set forth:

Independent Claims 1, 9, 14, and 21 recite the generating of an indicia that is indicative of a supplier's performance (Claim 15 only stores data representing various supply chain performance aspects). However generating a number that is indicative of something without actually apply the number to accomplish a result fails the useful test within USC 101 (This argument also applies to Claim 15, since there is no result being cited within the claim). As it is currently claimed, the indicia that is generated within the claims is not further used in the claims to, for example, compare the supplier to another supplier (e.g. benchmarking) or to provide a determination, for example, that based on the evaluations, that the supplier meets or exceeds a minimum standard for the suppliers.

Finally, although an indicia is generated, it is not tangible because, for example, there is no limitation cited that the indicia is displayed or printed. As it is claimed, it could be resident in a computer and not visible (i.e. tangible) at all.

Additionally, the claims, as they are currently cited, do not produce a result that is substantially repeatable and thus do not produce a result that is concrete. If different persons were to submit evaluations into the system (those persons still being a team member, team leader and a supplier) on subsequent evaluations, the results would be different. There is nothing in the claims, as they are cited, that positively recites that the evaluations are such that there is some measure of repeatability recited (e.g. rankings of 1 to 5 used, a survey form, etc.). The limitations cited of 'evaluations' fails the concrete test, because as it is currently claimed, the results of those evaluations is not repeatable.

Therefore, since the limitations regarding the indicia are not useful or tangible and the limitations regarding the evaluation are not concrete, the claims as a whole do not accomplish a practical result (Final Office Action, Section 3, Pages 2-3).

However, the examiner has misstated the requirements for a claim to be statutory. There is no specific requirement that a the claims "product a result that is substantially repeatable" for a claim to be statutory. (Final Office Action dated July 10, 2006, page 3.) When discussing patentable subject matter for computer related inventions, the MPEP sets forth:

The claimed invention as a whole must accomplish a practical result. . . . The purpose of this requirement is to limit patent protection to inventions that possess a certain level of "real world" value, as opposed to subject matter that represents nothing

more than an idea or concepts, or is simply a starting point for future investigation or research. . . Accordingly, a complete disclosure should contain some indication of the practical application for the claimed invention, i.e., why the applicant believes the claimed invention is useful. (M.P.E.P. 2106A, *citations omitted*.)

In the present application, the claims as a whole accomplish the practical result of evaluating a supplier and are thus statutory.

Additionally, when discussing the 35 U.S.C. § 101 rejections of claims 1, the Examiner set forth:

Claim 1 recites a series of steps comprising receiving into a website a number of evaluations that are used to generate an indicia of a supplier's performance. Since the method is tangibly embodied, it is not considered to be an abstract idea. However, there is no real-world practical application recited so the method is considered to fail the useful test. (Final Office Action, Section 8, Page 5).

A similar analysis was provided for rejections of claims 9, 14, 15 and 21.

When discussing that an invention must be useful, the M.P.E.P. has set forth:

To satisfy **35 U.S.C. 101**, an invention must be "useful." Courts have recognized that the term "useful" used with reference to the utility requirement can be a difficult term to define. *Brenner v. Manson*, 383 U.S. 519, 529, 148 USPQ 689, 693 (1966) (simple everyday word like "useful" can be "pregnant with ambiguity when applied to the facts of life."). Where an applicant has set forth a specific and substantial utility, courts have been reluctant to uphold a rejection under **35 U.S.C. 101** solely on the basis that the applicant's opinion as to the nature of the specific and substantial utility was inaccurate. For example, in *Nelson v. Bowler*, 626 F.2d 853, 206 USPQ 881 (CCPA 1980), the court reversed a finding by the Office that the applicant had not set forth a "practical" utility under **35 U.S.C. 101**. **In this case** the applicant asserted that the composition was "useful" in a particular pharmaceutical application and provided evidence to support that assertion. Courts have used the labels "practical utility," "substantial utility," or "specific utility" to refer to this aspect of the "useful invention" requirement of **35 U.S.C. 101**. The Court of Customs and Patent Appeals has stated:

Practical utility is a shorthand way of attributing "real-world" value to claimed subject matter. In other words, one skilled in the art can use a claimed discovery in a manner which provides some immediate benefit to the public. *Nelson v. Bowler*, 626 F.2d 853, 856, 206 USPQ 881, 883 (CCPA 1980).

Practical considerations require the Office to rely on the inventor's understanding of his or her invention in determining whether and in what regard an invention is believed to be "useful." Because of this, Office personnel should focus on and be receptive to

assertions made by the applicant that an invention is "useful" for a particular reason. (MPEP 2107.01(I))

As stated in the previous Response, Applicants respectfully submit that the claimed invention is directed to a specific and substantial utility. For example, claim 1 is directed to the specific and substantial utility of “evaluating the performance of a supplier” by “generating an indicia of the performance of the supplier”.

Additionally, to further support Applicant’s position that the claims are statutory, the claims have been amended to affirmatively recite that the evaluations as well as the indicia of the performance of the supplier are stored within computer readable media. Accordingly, the claims are statutory.

Claims 1 - 3, 9, 12 - 14 and 21 stand rejected over Powers, U.S. Publication No. 2002/0040309 (Powers). Claims 4 -8, 10, 11 and 22 stand rejected over Powers in view of PRTM’s Performance Management Group benchmarking service described in Supply Chain Council’s Webpage Newsletter of November 1998 describing PRTM’s Online Supply-Chain Benchmarking, Pages 4 – 5” (Reference A), “PRTM Webarchive.org webpage dated December 5, 1998” (Reference B), and “Supply Chain Council presentation of May 12, 1999” (Reference C), (all generally referred to as the PRTM documents or PRTM). Claims 15 - 20 stand rejected over the PRTM documents.

In response to Applicant’s arguments that Powers does not teach or disclose where one of the types of users entering evaluations is the actual vendor or supplier being evaluated, the Examiner set forth:

Powers teaches that a service manager enters evaluations into the system. This service manager is head of a group that provides, or supplies service to the rest of the organization. From that standpoint this individual is a supplier or vendor to the rest of the organization. The claim does not cite that the supplier or vendor is in an external organization to the other members who provide an evaluation, only that an evaluation is being provided of a supplier or vendor (Final Office Action, Section 5, Page 4).

The independent claims have been amended to make it clear that the supplier is in an organization that is external to the customer.

In response to Applicant's arguments that the terms "team member of the customer", "team leader of the customer" and "supplier" be provided patentable weight, examiner set forth:

The claims recited limitations that three evaluations are received into a system to evaluate a supplier. The positions of the individuals, as they are currently cited in the claims, are irrelevant. There is no positive recitation in the claim such that there is a connection between the evaluation and the currently cited position description of the individual providing an evaluation.

On the other hand, if the claim positively recited that a team member of a customer of a supplier were to submit an evaluation of the supplier based on that team member's experience with the supplier, then the descriptive language becomes functional, because it is clear that the team member's is in putting an evaluation based on their claimed knowledge and/or interaction with the supplier (Final Office Action, Section 6, Pages 4-5).

Applicants have amended the claims to positively recite the language suggested by the examiner.

Additionally, the Examiner has set forth that Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguished them from the references. Applicants respectfully disagree with this position of the Examiner. However, in an effort to expedite prosecution, Applicants will attempt to provide additional specificity regarding how the claims patentably distinguish over the references.

The present invention generally relates to evaluating a customer's suppliers. The invention teaches a method for electronically compiling analysis of a supplier's performance from team members, the supplier and a team leader. The invention discloses several measures of efficiency of each supplier and further discloses reports to compare suppliers to other suppliers of the same, or similar, components. Additional reports can be generated to show historical trend of the supplier's performance. An embodiment of the invention allows suppliers to review their final scorecards and compare their scorecards to other suppliers of the same, or similar, components.

More specifically, the present invention, as set forth by independent claim 1, relates to a method for a customer to evaluate performance of a supplier where the supplier includes at least

one of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider. The method includes receiving a first evaluation of the supplier submitted electronically by a team member of a customer of the supplier into a customer website where the first evaluation is based upon at least one experience of the team member with the supplier, receiving a second evaluation of the supplier submitted electronically by a team leader of the customer into a customer website where the second evaluation is based upon at least one experience of the team member with the supplier, receiving a third evaluation of the supplier submitted electronically by the supplier into a customer website where the supplier is part of an organization that is external to the customer, and generating an indicia of a supplier's performance based on the first, second and third evaluation where the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

The present invention, as set forth by independent claim 9, relates to a system for evaluating a supplier where the supplier includes at least one of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider and which includes a computer system. The computer system includes a computer program product encoded in computer readable media and is operable to receive a first evaluation of a supplier based upon at least one experience of the team member with the supplier submitted by a team member of a customer of the supplier, receive a second evaluation of the supplier based upon at least one experience of the team leader with the supplier being submitted by a team leader of the customer, receive a third evaluation of the supplier submitted by the supplier who is part of an organization that is external to the customer, and generating an indicia of the supplier's performance based on the first, second and third evaluation. The supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

The present invention, as set forth by independent claim 14, relates to a computer program product encoded in computer readable media. The computer program product includes instructions, executable on a computer system, configured to receive a first evaluation based upon at least one experience of the team leader with the supplier of a supplier submitted electronically by a team member of a customer of the supplier, receive a second evaluation based

upon at least one experience of the team leader with the supplier of a supplier submitted electronically by a team leader of the customer, receive a third evaluation of the supplier who is part of an organization that is external to the customer submitted electronically by the supplier and generate an indicia of the performance of the supplier based upon the first, second and third evaluations. The supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

The present invention, as set forth by independent claim 15, relates to a system for evaluating a supplier who is part of an organization that is external to a customer which includes a computer system. The computer system includes a data storage device. The data storage device stores data for a supplier performance among suppliers supplying a class of components. The data includes data representing quality of components supplied by each supplier, data representing cost of components supplied by each supplier, data representing availability of the components from each supplier, data representing service performance of each supplier, and data representing a top performing vendor among the suppliers supplying the class of components. The supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

The present invention, as set forth by independent claim 17, relates to a method of evaluating the performance of a supplier who is part of an organization that is external to a customer. The performance of the supplier is determined from at least one of a group. The method includes determining a best supplier in the class of suppliers, where the class of suppliers are those suppliers supplying a component to a manufacturer and where the determination is performed by a computer system. The supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

The present invention, as set forth by independent claim 21, relates to a method of evaluating the performance of a supplier who is part of an organization that is external to a customer. The performance of the supplier is determined from at least one of a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider. The method includes receiving a first evaluation of the supplier based

upon at least one experience of the team member with the supplier submitted electronically by a team member of a customer of the supplier, receiving a second evaluation of the supplier based upon at least one experience of the team leader with the supplier submitted electronically by a team leader of the customer, and generating an indicia of a supplier's performance based on the first and second evaluation. The supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

Powers generally relates to evaluation tools and discloses a performance evaluation system which uses productivity and quality data to evaluate the performance of an individual, group, process or other suitable type of item or operation. (See, e.g., Powers, ¶21.) The system is deployed on a three tiered architecture having a client space, a server application space and a database space. (See, e.g., Powers, ¶22.) Powers discloses a plurality of types of users that provide information to the evaluation system, these users include a sales manager, a product manager and a product agent. (See, e.g., Powers ¶¶ 38, 40 and 44 and Powers Figures 2 and 3.) However, Powers does not disclose as one of these types of users the actual supplier or vendor being evaluated.

Reference A of the PRTM documents discloses that the performance measurement group (PMG), a subsidiary of Pittiglio Rabin Todd & McGrath (the PRTM organization), was selected to undertake a new benchmarking study. The benchmarking study is intended to provide an online subscription series to map companies supply-chain data to a predefined council model. The subscription series is intended to offer cross industry reports that analyze key drivers of supply-chain performance, key metrics for measuring overall supply-chain performance and drilling down into specific functional areas, comparative performance data from companies of a variety of industries, best practices of top performers and online historical supply-chain benchmarking data for trending purposes (Reference A, pages 4 and 5.) Reference B of the PRTM documents sets forth an apparent marketing document of the PRTM organization which discusses benchmarking studies that PRTM conducts for its clients. Reference C of the PRTM documents discloses a slide presentation which presents a representative analysis of a supply chain scorecard. The metrics include data on delivery performance and quality, flexibility and responsiveness, cost and assets. (Reference C, page 22.)

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a method for a customer to evaluate performance of a supplier where *the supplier includes at least one of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, much less such a method which includes receiving a first evaluation of the supplier submitted electronically by a team member of a customer of the supplier into a customer website where *the first evaluation is based upon at least one experience of the team member with the supplier*, receiving a second evaluation of the supplier submitted electronically by a team leader of the customer into a customer website where *the second evaluation is based upon at least one experience of the team member with the supplier*, receiving a third evaluation of the supplier submitted electronically by the supplier into a customer website where the supplier is part of an organization that is external to the customer, and generating an indicia of a supplier's performance based on the first, second and third evaluation where *the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 1. Accordingly, claim 1 is allowable over Powers and the PRTM documents. Claims 2 - 8 depend from claim 1 and are allowable for at least this reason.

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a system for evaluating a supplier where *the supplier includes at least one of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, much less such a system which includes a computer program product encoded in computer readable media and is operable to receive a first evaluation of a supplier submitted by a team member of a customer of the supplier *based upon at least one experience of the team member with the supplier*, receive a second evaluation of the supplier submitted by a team leader of the customer *based upon at least one experience of the team leader with the supplier*, receive a third evaluation of the supplier submitted by the supplier who is part of an organization that is external to the customer, and generating an indicia of the supplier's performance based on the first, second and third evaluation and *the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 9. Accordingly, claim 9 is allowable over Powers and the PRTM documents. Claims 10 and 11 depend from claim 9 and are allowable for at least this reason.



Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a computer program product encoded in computer readable media where the computer program product includes instructions, executable on a computer system, configured to receive a first evaluation submitted electronically by a team member of a customer of the supplier *based upon at least one experience of the team leader with the supplier of a supplier*, receive a second evaluation of a supplier submitted electronically by a team leader of the customer *based upon at least one experience of the team leader with the supplier*, receive a third evaluation of the supplier who is part of an organization that is external to the customer submitted electronically by the supplier and generate an indicia of the performance of the supplier based upon the first, second and third evaluations *and the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 14. Accordingly, claim 14 is allowable over Powers and the PRTM documents.

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a system for evaluating a supplier which includes a computer system which includes instructions, executable on a computer system, configured to receive a first evaluation submitted electronically by a team member of a customer of the supplier *based upon at least one experience of the team leader with the supplier of a supplier*, receive a second evaluation of a supplier submitted electronically by a team leader of the customer *based upon at least one experience of the team leader with the supplier*, receive a third evaluation of the supplier who is part of an organization that is external to the customer submitted electronically by the supplier and generate an indicia of the performance of the supplier based upon the first, second and third evaluations *and the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 15. Accordingly, claim 15 is allowable over Powers and the PRTM documents. Claim 16 depends from claim 15 and is allowable for at least this reason.

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a method of evaluating the performance of a supplier who is part of an organization that is external to a customer where the performance of the supplier is determined from at least one of a group and the method includes determining a best supplier in the class of suppliers, where *the*

*class of suppliers are those suppliers supplying a component to a manufacturer where the determining is performed by a computer system the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider, all as required by claim 17. Accordingly, claim 17 is allowable over Powers and the PRTM documents. Claims 18 - 20 depend from claim 17 and are allowable for at least this reason.*

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a method of evaluating the performance of a supplier who is part of an organization that is external to a customer where the performance of the supplier is determined from *at least one of a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, much less such a method which includes receiving a first evaluation of the supplier submitted electronically by a team member of a customer of the supplier *based upon at least one experience of the team member with the supplier*, receiving a second evaluation of the supplier submitted electronically by a team leader of the customer *based upon at least one experience of the team leader with the supplier*, and generating an indicia of a supplier's performance based on the first and second evaluation, all as required by claim 21. Accordingly, claim 21 is allowable over Powers and the PRTM documents. Claim 22 depends from claim 21 and is allowable for at least this reason.

### **CONCLUSION**

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the examiner is requested to telephone the undersigned.

I hereby certify that this correspondence is being electronically submitted to the COMMISSIONER FOR PATENTS via EFS on November 9, 2006.

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Respectfully submitted,

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